

10
No. 91-1326

Supreme Court, U.S.

FILED

**In The
Supreme Court of the United States**
October Term, 1991

JUN 5 1992

OFFICE OF THE CLERK

**THE DISTRICT OF COLUMBIA AND
SHARON PRATT KELLY, MAYOR,**
Petitioners,

v.

THE GREATER WASHINGTON BOARD OF TRADE,
Respondent.

**On Writ of Certiorari to the United States
Court of Appeals for the District of Columbia Circuit**

Brief of Amicus Curiae, State of Oklahoma Ex Rel
Dave Renfro, Commissioner of Labor, Administrator of the
Workers' Compensation Court and the Attorney General

In Support of Petitioners:

SUSAN B. LOVING,
Attorney General
RABINDRANATH RAMANA,
Asst. Attorney General
MICHAEL M. SYKES,
General Counsel,
Department of Labor

* KAYLA A. BOWER,
Asst. Counsel,
Department of Labor and
for Marcia Davis
Administrator, Workers'
Compensation Court

Counsel for Amicus Curiae
4001 Lincoln Boulevard
Oklahoma City, OK 73105
Telephone: (405) 528-1500

* Counsel of Record

TABLE OF CONTENTS

INTEREST OF AMICUS CURIAE	1
SUMMARY OF ARGUMENT	2
ARGUMENT	3
I. The decision below is in conflict with <u>Shaw</u> and threatens the enforcement of Oklahoma's workers' compensation laws.	3
II. This Court should avoid unnecessarily broad language which encourages promoters to evade state insurance requirements by hiding behind ERISA	5
CONCLUSION	8
PROOF OF SERVICE	9
APPENDIX	A-1

TABLE OF AUTHORITIES

Cases

<u>Foust v. City Insurance Company</u> , 704 F.Supp. 752 (W.D. Tex. 1989)	4
<u>Greater Washington Board of Trade v. District of Columbia</u> , 948 F.2d 1317 (D.C. Cir. 1991)	3
<u>Kay v. Home Indemnity Company</u> , 337 F.2d 898 (5th Cir. 1964)	4
<u>Olivarez v. Utica Mutual Insurance Company</u> , 704 F.Supp. 752 (N.D. Tex. 1989)	4

R.R. Donnelley & Sons Company v. Prevost, 915 F.2d 787
(2d Cir. 1990)2,3

Shaw v. Delta Air Lines, Inc., 463 U.S. 85 (1983)2,3,5,7,8

Statutes

Title 28, U.S.C. §1445(c)4

Title 29, U.S.C. §1003(b)(3)4

Title 85, Okla. Stat. § 614

Title 85, Okla. Stat. § 64.4

Title 85, Okla. Stat. § 66.14

Title 85, Okla. Stat. § 66.24

Title 85, Okla. Stat. § 63.1-63.25

Title 85, Okla. Stat. § 63.35

OTHER AUTHORITIES

H. R. CONF. REP. NO. 1280, 93rd Cong., 2d Sess. (1974)4

INTERIM REP. ON COMBATTING FRAUD AND ABUSE IN
EMPLOYER SPONSORED HEALTH AND BENEFIT
PLANS NO. 102-262, 102d Cong., 2d Sess. (1992)6,7

HEARINGS BEFORE PERMANENT SUBCOMMITTEE ON
INVESTIGATIONS OF COMMITTEE ON GOVERNMENTAL
AFFAIRS, S. HRG. 101-799 (1990)6

In The
Supreme Court of the United States
October Term, 1991

THE DISTRICT OF COLUMBIA AND
SHARON PRATT KELLY, MAYOR,
Petitioners,

v.

THE GREATER WASHINGTON BOARD OF TRADE,
Respondent.

On Writ of Certiorari to the United States
Court of Appeals for the District of Columbia Circuit

Brief of Amicus Curiae, State of Oklahoma Ex Rel
Dave Renfro, Commissioner of Labor, Administrator of the
Workers' Compensation Court and the Attorney General

INTEREST OF AMICUS CURIAE

The State of Oklahoma, through its primary enforcement agencies in the workers' compensation arena, is concerned that the opinion rendered by the District of Columbia Circuit provides encouragement for promoters to hide behind perceived ERISA preemption to avoid traditional responsibilities in the workers' compensation area. Oklahoma's concerns are not unlike those of most states with similar compulsory laws and insurance requirements. (See 1991 Analysis of Workers' Compensation Laws, prepared and published by the U.S. Chamber of Commerce, APPENDIX)

The Oklahoma Commissioner of Labor is responsible for enforcing workers' compensation insurance requirements. The Commissioner of Labor is concerned about leasing companies and other employers which devise an unregulated "ERISA screen" to avoid the requirement to carry approved workers' compensation insurance. The Commissioner fears an overbroad opinion such as the one

rendered by the District of Columbia Circuit appears to sanction employers removing themselves from the workers' compensation system and its requirements. The Commissioner of Labor has recently been required to cite employers for failing to carry insurance. The Commissioner faces threats to remove workers' compensation cases from the Oklahoma court system to federal court because of an "ERISA" plan and dicta contained in Circuit opinions now under review by this Court.

The Administrator of the Workers' Compensation Court is responsible for approving self-insurance, either group or individual, for employers who may elect this as an alternative to an insurer approved by the Insurance Commission. The Administrator faces the prospect of these employers no longer maintaining authorized insurance if they are allowed to remove themselves from the workers' compensation system by hiding behind "ERISA."

The State, through the Attorney General and various District Attorneys, enforces its requirements with both civil and criminal penalties.

SUMMARY OF ARGUMENT

While ERISA preemption is expansive, state laws such as disability insurance and workers' compensation, are not preempted. This Court should overrule the District of Columbia Circuit opinion under review because it is at odds with Shaw v. Delta Air Lines, Inc., 463 U.S. 85 (1983). The Second Circuit correctly applied Shaw in R.R. Donnelley & Sons Company v. Prevost, 915 F.2d 787 (2d Cir. 1990), cert. denied, 111 S.Ct. 1415 (1991).

Blurring of lines protecting state disability and workers' compensation laws from preemption by ERISA unnecessarily encourages opportunistic promoters to profit from stonewalling state enforcement efforts. The misapplication of Shaw by the Circuit Court has contributed to increasing numbers of Oklahoma employers, particularly company leasing formats, who are refusing to comply

with mandatory insurance requirements for paying workers' compensation claims. Oklahoma is entitled to enforce its workers' compensation laws in the court established for that purpose.

ARGUMENT

THE DECISION BELOW IS IN CONFLICT WITH SHAW AND THREATENS THE ENFORCEMENT OF OKLAHOMA'S WORKERS' COMPENSATION LAWS.

The State of Oklahoma may maintain a workers' compensation system without fear it will be destroyed by ERISA. In Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 108 (1983), this Court unanimously concluded, "Congress surely did not intend, at the same time it preserved the role of state disability laws, to make enforcement of those laws impossible." First, this Court made clear that "the State may not require an employer to alter its ERISA plan." However, "[i]f the State is not satisfied that the ERISA plan comports with the requirements of its disability insurance law, it may compel the employer to maintain a separate plan that does comply." Id.

The Second Circuit's opinion in R.R. Donnelley & Sons Co. v. Prevost, 915 F.2d 787, 793 (2d Cir. 1990) clearly applies the Shaw principle of freely allowing the states to enforce those areas of insurance law retained to them.

The District of Columbia Circuit's opinion in Greater Washington Board of Trade v. District of Columbia, 948 F.2d 1317, 1326 (D.C. Cir. 1991), blurs the meaning of "relate to."

Broad language to preempt the District of Columbia law was the Circuit Court's reaction to its suspicions that "appellees have now tried to regulate indirectly what they were forbidden to regulate directly." 948 F.2d at 1326. Broad language by the Circuit has given rise in Oklahoma to promoters pushing plans as a way to avoid the state's ordinary enforcement of its workers' compensation laws. This Court's affirmance of the District of Columbia Circuit opinion would further encourage promoters and force the State of Oklahoma to

devote considerable time and resources to protracted litigation to preserve its workers' compensation system.

Nothing suggests that Congress sought to erode the states' dominance of their workers' compensation systems. When ERISA was passed in 1974, the Conference Committee favored preemption but explained that,

(However, following title I generally, preemption will not apply to government plans, church plans . . . work[ers'] compensation plans, non-U.S. plans primarily for nonresident aliens, and so called 'excess benefit plans.')

H.R. CONF. REP. NO. 1280, 93rd Cong., 2d Sess. 383 (1974)

There is a strong congressional policy that workers' compensation cases "have little real business in a federal court." Kay v. Home Indemnity Company, 337 F.2d 898, 901 (5th Cir. 1964). The federal statutes prohibit the removal of all workers' compensation cases. Title 28, U.S.C. §1445(c); Olivarez v. Utica Mutual Insurance Company, 710 F.Supp. 642, 643 (N.D. Tex. 1989). Another Texas district court concluded that, "Clearly this provision [29 U.S.C. §1003(b)(3)] is intended to exempt state worker's compensation plans generally from preemption by ERISA." Foust v. City Insurance Company, 704 F.Supp. 752, 753 (W.D. Tex. 1989).

Oklahoma established a mandatory requirement for insurance, whether through an authorized insurer or approved self-insurance, either group or individual. Title 85, Okla. Stat. §61. The Oklahoma Legislature established requirements for policies of insurance. Title 85, Okla. Stat. § 64. The Legislature also established an Individual Self-Insured Guaranty Fund, Title 85, Okla. Stat. §66.1, and a Group Self-Insurance Guaranty Fund, Title 85, Okla. Stat. §66.2.

An employer who fails to secure workers' compensation insurance, either through an authorized insurer or approved self-insur-

ance, is liable for a civil penalty enforced by the Commissioner of Labor. Title 85, Okla. Stat. §63.1-63.2. An employer who willfully fails to provide compensation may be charged with criminal penalties. Title 85, Okla. Stat. §63.3.

This Court in Shaw did not prevent Oklahoma, or any other state, from accepting an ERISA plan if it complies with Oklahoma's statutory insurance requirements. But Shaw left Oklahoma free to reject an ERISA plan if it did not comport with Oklahoma's requirements for insurance compensation for workers.

II. THIS COURT SHOULD AVOID BROAD LANGUAGE WHICH ENCOURAGES PROMOTERS TO EVADE STATE INSURANCE REQUIREMENTS BY HIDING BEHIND ERISA.

This Court should reverse the District of Columbia Circuit and avoid contributing to the use of ERISA as a means to subject the States to further abuses by promoters and sharp operators who would rely on overly broad language interpreting ERISA. The states, including Oklahoma, are beset with promoters who seek to take advantage of regulatory confusion. The Senate Permanent Subcommittee on Investigations has an on-going investigation documenting these issues which plague the states.

On May 15, 1990, the Senate Permanent Subcommittee on Investigations held the first in a series of public hearings to examine the ability of the nation's current regulatory system to combat fraud and abuse in the insurance industry. Subsequent hearings were held on April 24, June 26 and July 19, 1991. The hearings examined a number of potential vulnerabilities in the insurance regulatory system which were ripe for abuse and marketed on a national scale with little or no regulation. Although the Subcommittee is continuing its investigation of insurance fraud and abuse, it issued an interim report setting forth its findings and recommendations.

The Subcommittee noted that despite amendments to clarify

ERISA preemption provisions, states continue to complain that fraudulent promoters still attempt to wrap themselves in the mantle of an employee benefit plan, enabling them to escape state regulatory efforts. Permanent Subcommittee on Investigations, Committee on Governmental Affairs United States Senate, "Interim Report on Combatting Fraud and Abuse in Employer Sponsored Health Benefit Plans," Report 102-262 (1992), p. 7. The Subcommittee concluded that ERISA has become a "tactical nuclear weapon" used by fraudulent promoters "against the threat of state regulation." *Id.* at 9. For example, alleged union sponsored plans and employee leasing operations provide opportunities for promoters to exploit workers and the system. *Id.* at 14-15, 19. James Long, North Carolina Commissioner of Insurance, described operational structures which were a "subterfuge to try to hide in the language of ERISA and avoid state regulation." Hearing before the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs United States Senate, May 15, 1990, S. Hrg. 101-799, p. 98. The Subcommittee said in its conclusion,

For almost 18 years now, comen, crooks, and hucksters have been able to take advantage of a continuing regulatory vacuum (be it actual or perceived) in the area of self-insured employer sponsored health benefit programs to fleece unsuspecting employers and their employees of hard-earned dollars. They have built their lavish lifestyles on the shattered lives of innocent men, women and children while regulators have argued with one another over who has jurisdiction and whether the problem already has been solved. Interim Report at 17-18.

Jo Ann Howard, Texas Board of Insurance member, warned that "new schemes are multiplying right now like cancerous cells." Hearing at 9. Tom Gallagher, Florida Insurance Commissioner, testified that his state is "home to virtually every benefit alternative now being explored." *Id.* at 11. Senator Roth concluded, "When there is that much money involved, it should come as no surprise that slick operators have developed schemes which prey upon the unsuspecting

and leave victims scarred for life." *Id.* at 15. Ms. Howard lamented, "The States lose, the participants lose, the legitimate insurance companies lose. The only people who come out ahead in this are the swindlers and the crooks. . . ." *Id.* at 26.

As a result of the Circuit's retreat from Shaw, the State of Oklahoma has experienced an increasing number of citations issued as a result of promoters using an unregulated ERISA plan to avoid purchase of approved insurance as required by Oklahoma's workers' compensation laws.

CONCLUSION

This Court should overrule the District of Columbia Circuit and reinforce the principles of Shaw so that the states, including Oklahoma, will be free to enforce their workers' compensation system free of protracted litigation in federal court.

Respectfully submitted,

SUSAN LOVING,
Attorney General

RABINDRANATH RAMANA,
Asst. Attorney General

MICHAEL M. SYKES,
General Counsel
Department of Labor

*

KAYLA A. BOWER,
Asst. Counsel
Department of Labor and
for Marcia Davis,
Administrator
Workers' Compensation
Court

Counsel for Amicus Curiae
4001 Lincoln Boulevard
Oklahoma City, OK 73105
Telephone: (405) 528-1500

* Counsel of Record

Proof of Service

I hereby certify that on this 5th day of June, 1992, a true and correct copy of the foregoing Brief of Amicus Curiae was mailed to:

Donna M. Murasky
Assistant Corporation Counsel
District Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Counsel for Petitioners

Lawrence P. Postol
Seyfarth, Shaw, Fairweather & Geraldson
815 Connecticut Ave., N.W.
Washington, D.C. 20006-7004
Counsel for Respondent

Kayla A. Bower

APPENDIX

**1991
Analysis of**

**WORKERS' COMPENSATION
LAWS**

**Prepared and Published by
the U.S. Chamber of Commerce**

CHART I

TYPE OF LAW AND INSURANCE REQUIREMENTS

January 1, 1991

STATE	TYPE OF LAW	INSURANCE	SELF-INSURANCE	PENALTIES ON FAILURE TO INSURE
ALABAMA	Compulsory	Required	Individual and group	Penalty of not less than \$25 nor more than \$1,000. Employer may be exempted from doing business and liable to suit with defense delayed and double amount of compensation.
ALASKA	Compulsory	Required	Permitted	Class B or C liability up to 1 year imprisonment, \$10,000 fine or both. Board may exempt use of other. Employer liable to suit with defense delayed and employer negligence presumed proximate cause of injury. Individuals in charge of corporation personally liable for compensation.
AMERICAN SAMOA	Compulsory	Required	Permitted	Maximum fine up to \$1,000 or imprisonment up to 1 year or both. Employer liable to suit with defense delayed.
ARIZONA	Compulsory	Required	Individual and group	Employer liable to suit with defense delayed. 10% penalty of award expenses and attorney's fees, or \$200 whichever is greater, plus 10% interest on amount paid from fund and penalty award from Special Fund required against doing business in state.
ARKANSAS	Compulsory	Required	Individual and group	\$500 fine or 1 year imprisonment or both. Employer liable to suit with defense delayed.
CALIFORNIA	Compulsory	Required	Permitted	Employer may be exempted from doing business. Minimum penalty with amount of fine under \$500 per employee. If a claim is filed and an employer has not secured coverage, the employer is liable to pay \$1,000 per employee in non-employment cases and \$5,000 per employee in employment cases. Failure to pay may result in multiple penalties. Penalties are limited up to \$1,000 imprisonment up to 90 days or both. \$500 penalty for failure to register in County's injury fund. Penalties are paid into Unemployment Fund and contribute to an employer's credit. Employer may sue for damages with employer's defense delayed and the compensation fund liable to make a contribution.
COLORADO	Compulsory	Required	Individual and group	Compensation increased 10% if employer liable to suit with defense delayed or later of employee. Employer may also be exempted from doing business.
CONNECTICUT	Compulsory	Required	Permitted	Penalty of not more than \$1,000 for failure to insure. Employer may be exempted from carrying out any contracts of employment.
DELAWARE	Compulsory	Required	Individual and group	Fine of 10 cents per day per employee maximum \$50. Maximum \$1 per day. If default continues for 30 days employer may be exempted from doing business. Employer liable to suit with defense delayed.
DISTRICT OF COLUMBIA	Compulsory	Required	Permitted	Fine of not more than \$1,000 or 1 year imprisonment or both.
FLORIDA	Compulsory	Required	Individual and group	Fine of not more than \$500 if upon receiving written notice requesting proof of coverage and employer is unable to prove he has secured coverage and if coverage is not obtained within 30 days of receiving notice. 110-day suspension with coverage is required. Fine, up to one year imprisonment and employer liable to suit with defense delayed, and may be exempted from doing business.
GEORGIA	Compulsory	Required	Individual and group	Maximum compensation may be increased 10%, plus attorney's fees. Penalty up to \$500 per day.
GUAM	Compulsory	Required	Not permitted	Uninsured employer may be sued at law or in admiralty. Insured employer liable in tort and in contribution among joint tortfeasors against the employer.
HAWAII	Compulsory	Required	Individual and group	\$250 or \$10 per employee per day, whichever is greater. Employer may be exempted from doing business.
IDAHO	Compulsory	Required	Permitted	Maximum compensation also liable to penalty of \$2 per day per employee and may be exempted from doing business after 30 days default. If employer has been sentenced a penalty within 3 years and continues failure to insure he is then sentenced \$500 for the second violation and \$1,000 for each violation thereafter.
ILLINOIS	Compulsory	Required	Individual and group	Fine of up to \$500 for each day's default. Employer liable to suit.
INDIANA	Compulsory	Required	Permitted	Class A violation—maximum fine \$10,000. Class B violation—employer may be liable to medical and wage payment plus double compensation and may be exempted from doing business.
IOWA	Compulsory	Required	Individual and group	Employer liable to suit with defense delayed and prosecution of negligence if employer is not hiring. Employer is liable to penalty of \$10 or \$100 per day and may be exempted from further compensation.
KANSAS	Compulsory	Required	Individual and group	Employer liable to suit with defense delayed.
KENTUCKY	Compulsory	Required	Individual and group	Failure to secure payment of compensation—claimant may claim compensation and bring action at law or in admiralty with employer's common law defense delayed. Employer may be exempted from doing business.
LOUISIANA	Compulsory	Required	Individual and group	10% penalty and reasonable attorney's fees for collection of claim.
MAINE	Compulsory	Required	Individual and group	Employer liable for civil penalty of up to \$10,000 payable in Special Injury Fund. Corporate employers subject to suspension or revocation of its authority to do business. Class B crime. Employer liable to suit with defense delayed.
MARYLAND	Compulsory	Required	Individual and group	Fine of \$500 to \$2,000 and imprisonment for not more than 1 year. Additional penalty for failure to comply with Compensation Fund's rules imposing 6 months' suspension. Employer also liable to suit with defense delayed. Other rules are contained in the Compensation Fund's rules. Fine of \$1,000 and 10% penalty on award payable in Unemployment Fund.
MASSACHUSETTS	Compulsory	Required	Individual and group	Fine of not more than \$500 or imprisonment for not more than 1 year or both. Employer liable to suit with defense delayed.
MICHIGAN	Compulsory	Required	Individual and group	Fine of \$1,000 or imprisonment for 30 days to 6 months or both. Employer liable to damages.
MINNESOTA	Compulsory	Required	Individual and group	Penalty of \$750 if under 3 employees, otherwise \$1,000. Additional penalty 3 times each, penalties for continued noncompliance. Employer may be exempted from further employment. Employer to determine compensation paid not less than 50% of actual compensation. Employer liable to suit with defense delayed.
MISSISSIPPI	Compulsory	Required	Individual and group	Fine up to \$1,000 or one year imprisonment or both. Employer also liable to suit with defense delayed.
MISSOURI	Compulsory	Required	Individual and group	Employer liable to suit with defense delayed. Worker may receive medical and wage benefits out of Special Injury Fund and employer is liable for amounts paid plus fine of \$100 per day of noncompliance and fine of \$100 per day of noncompliance. Penalties payable in Unemployment Fund.
MONTANA	Compulsory	Required	Individual and group	Employer must insure employer from doing business. Double amount of unpaid premiums assessed to employer. Maximum \$200. Employer liable for compensation payable up to \$50,000. Employer automatically registered in the coverage system. Penalties payable in Unemployment Fund.
NEBRASKA	Compulsory	Required	Permitted	Employer liable to suit with defense delayed. \$1,000 fine maximum. 1 year imprisonment or both may be imposed from doing business.
NEVADA	Compulsory	Required in some cases	Individual	Employer liable to suit with defense delayed and may be exempted from doing business. Maximum penalty for a fine up to \$500 per offense.
NEW HAMPSHIRE	Compulsory	Required	Individual and group	Penalty of \$2,000 plus \$100 per employee per day. Employer may be exempted from doing business and must secure the suit for damages.
NEW JERSEY	Statute	Required	Permitted	Employer liable to suit with defense delayed. Maximum penalties for a fine of not more than \$1,000 or not more than 90 days imprisonment or both plus \$25 for each 10 day period but not more than \$1,000 in any one fine. Also subject to \$1,000 plus 10% of award up to \$5,000 payable in Unemployment Fund.
NEW MEXICO	Compulsory	Required	Individual and group	Employer may be exempted from doing business and/or fined up to \$5,000.
NEW YORK	Compulsory	Required	Individual and group	Fine between \$500 and \$2,000 or imprisonment for up to 1 year or both with fine of \$1,000 for increased penalties. If an employer liable to suit with defense delayed. Maximum fine of \$250 for each 10 day period of no coverage in a suit not in excess of 20% of award for period of no coverage.

1. "Employees with more than 10,000 employees may get more or reduce or group self-insurance." See: Except as to state and federal subsidiaries, banks, trust companies, and savings and loan associations.

2. "Employees for group self-insurance is liable to double, triple penalties, and other private employers." See: \$1,000 and \$2,000 respectively for damages to suit.

3. "If self-insurers must be members of the Massachusetts Workers' Compensation Self-Insurers' Association." See: Employer engaged in having that must only be the agent of insurance liability for 10 days in any one year.

4. "Employees and state agencies may obtain individual or group self-insurance funds." See: Group self-insurance permitted for any size of firm under agreement.

5. "Employees temporarily working in state must have coverage in another state before beginning work in New York." See: Unless employer wants, Employer of firm within the required to insure.

6. "Group self-insurance authorized for hospitals and local government units." See: "Insurance companies and holders of a certificate are permitted to be permitted. Corporate officer and holder in other insurance companies or entities not of Unemployment Fund the 'single' business device to operations."

CHART 1 TYPE OF LAW AND INSURANCE REQUIREMENTS January 1, 1991 (continued)

JURISDICTION	TYPE OF LAW	INSURANCE	SELF-INSURANCE	FINANCIAL RESERVE REQUIRED TO INSURE
NORTH CAROLINA	Compulsory	Required	Individual and group	Maximum premium by law of \$1.00 per day per employee maximum \$100 maximum \$50 per day; improvement or both Employee liable to suit with common law damages (disputed)
NORTH DAKOTA	Compulsory	Required in some cases	Not permitted	Maximum premium by law \$100 per 1 year; improvement or both Uninsured employer liable for damages or injury or death and burial and funeral of employee (disputed) Employer may be exempted from employing uninsured workers
OHIO	Compulsory	Required in some cases	Permitted	Maximum premium by law up to \$100 if within certain degree of negligence - this up to \$750 improvement up to 50 days or both Employer may be exempted from doing business Employer is also liable to suit with common law damages
OKLAHOMA	Compulsory	Required	Individual and group	Penalty of \$200 per employee for first offense \$500 per employee for second offense up to \$10,000 Penalty of improvement or up to 60 months or jail
OREGON	Compulsory	Required	Individual and group	Employer is liable to suit with common law damages Employer may bring workers' comp up to \$1,000 plus up to \$50 per day administrative costs and legal fees, and fines up to \$5,000 based on type of injury
PENNSYLVANIA	Compulsory	Required	Permitted	Fine of \$500 to \$2,000 per day or not more than 1 year imprisonment or both Employer liable to suit with common law damages
RHODE ISLAND	Compulsory	Required in some cases	Not permitted	Maximum fine of \$200 maximum of imprisonment for not more than 6 months or both Employer liable to suit with common law damages Penalty 10% of compensation maximum \$10,000
SOUTH CAROLINA	Compulsory	Required	Individual and group	Fine of \$1,000 and 1 year imprisonment Corporate officer liable personally employee liable to suit with common law damages
SOUTH DAKOTA	Compulsory	Required	Individual and group	Employer liable to suit for damages or double compensation and medical care as benefits
TENNESSEE	Compulsory	Required	Individual and group	Administrative fine of \$5,000 for every 30 days of willful refusal and nonpayment
TEXAS	Compulsory	Required	Not permitted	Employer liable to suit with common law damages
UTAH	Compulsory	Required	Permitted	Fine of not more than \$100 times the premium employer must have paid during period of non-compliance Employer liable to suit with common law damages Costs and attorney's fees in suit not Employer's and officers' liability of a maximum \$5,000 for all compensation and non-employment of Employer's Fund plus interest costs and attorney's fees
VERMONT	Compulsory	Required	Permitted	Failure to secure compensation - fine up to \$50 per day up to a maximum of \$1,000 Fine increases to \$150 per day 30 days after notice by Commissioner
VIRGIN ISLANDS	Compulsory	Required in some cases	Not permitted	Employer liable for compensation and expenses plus penalty equal to 50% of compensation and expenses Employer liable to suit with common law damages Fine up to \$500 or imprisonment up to 6 months or both - interest on penalty if default Employer may be exempted from doing business
VIRGINIA	Compulsory	Required	Individual and group	Fine of \$50 to \$1,000 Employer liable to suit with common law damages and may be exempted from doing business intentionally uninsured employer commits class 2 misdemeanor
WASHINGTON	Compulsory	Required in some cases	Permitted	Employer may be exempted from doing business (disputed) Failure to insure - fine of \$25 to \$100 daily 50% to 100% of claim cost plus \$25 or twice the unpaid premium whichever is greater
WEST VIRGINIA	Compulsory	Required in some cases	Permitted	Employer liable to suit with common law damages all paid premiums plus interest reimbursement to state fund for claims paid on no fault for future in substance may be exempted from doing business if 50%
WISCONSIN	Compulsory	Required	Permitted	Fine of \$10 to \$100 and double the unpaid premium Each day is a separate offense Employer may be exempted from doing business pending compliance Employer liable for all benefits available on uninsured claims
WYOMING	Compulsory	Required in some cases	Not permitted	Fine of not more than \$750 plus 10% interest per month on unpaid balance Employer may also be exempted from doing business Employer liable to suit with common law damages
Y.U.C.A.	Compulsory	Required	Permitted	
LOUISIANA ACT	Compulsory	Required	Individual and group	Fine of not more than \$1,000 or 1 year imprisonment or both for failure to secure payment of compensation
ALBERTA	Compulsory	Required in some cases	Not permitted	Failure to furnish required security - Board may order employer to cease employment - fine up to \$200 daily Failure to submit statement of wages - up to 10% of compensation plus penalty up to 10% of compensation payable maximum \$500 Failure to pay compensation - up to 10% of compensation plus penalty up to 10% of compensation payable maximum \$500 Failure to pay compensation - up to 10% of compensation plus penalty up to 10% of compensation payable maximum \$500 Failure to pay compensation - up to 10% of compensation plus penalty up to 10% of compensation payable maximum \$500
BRITISH COLUMBIA	Compulsory	Required in some cases	Not permitted	Failure to submit statement of wages - compensation payable plus percentage of compensation due to Board Failure to pay compensation - unpaid amount plus costs of collection and percentage penalty compensation payable and employer may be exempted from operating
MANITOBA	Compulsory	Required in some cases	Not permitted	Failure to submit statement of wages - maximum fine \$200 Failure to submit statement of wages - employer liable for full of compensation payable maximum \$500 Failure to pay compensation - penalty of 10% of amount in default for first month and 1% for each subsequent month
NEW BRUNSWICK	Compulsory	Required in some cases	Not permitted	Failure to submit statement of wages - maximum penalty \$500 plus percentage loss to Board Failure to pay compensation - employer liable for compensation payable plus percentage penalty and costs of collection
NEWFOUNDLAND	Compulsory	Required in some cases	Not permitted	Failure to submit statement of wages - maximum penalty \$1,000 Failure to pay compensation - assessment plus costs of collection and a percentage penalty Employer may be liable for costs of claims or amounts during period of default
NORTHERN TERRITORIES	Compulsory	Required in some cases	Not permitted	Failure to submit statement of wages or to pay compensation - employer liable for compensation payable and assessment plus percentage of assessment as penalty established by Board or regulations
NOVA SCOTIA	Compulsory	Required in some cases	Not permitted	Employer liable for compensation payable Failure to submit statement of wages - employer liable for unpaid amount and costs of collection plus 10% penalty 1% penalty for each month in default \$50 if unpaid statement Failure to pay compensation - 10% penalty plus 1% for each month in default and employer may be exempted from operating
ONTARIO	Compulsory	Required in some cases	Not permitted	Failure to submit statement of wages upon commencing operations and at other required times - penalty plus liability to additional percentage of assessment and costs of claim or assessment of Board
PRINCE EDWARD ISLAND	Compulsory	Required in some cases	Not permitted	Failure to report period of day assessment - penalty of \$100 per week of default plus 10% of amount unpaid after 1 month and 1% for each additional month Failure to pay assessment - employer may be exempted from operating
QUEBEC	Compulsory	Required in some cases	Not permitted	Failure to submit statement of wages upon commencing operations or at other required times - maximum fine \$1,000 Failure to pay assessment - employer liable for 10% of claim cost which cannot be less than \$100
SASKATCHEWAN	Compulsory	Required in some cases	Not permitted	Failure to submit statement of wages upon commencing operations or at other required times - maximum fine \$200 Failure to pay assessment - employer liable for percentage penalty to be established by Board and may be exempted from operating
YUKON TERRITORY	Compulsory	Required in some cases	Not permitted	Employer liable to submit statement of wages upon commencing operations or at other required times and failure to pay assessment may be exempted from operating or a percentage penalty established by Board and employer may be exempted from operating
CANADIAN RED CROSS SOCIETY ACT	Compulsory	Required	At discretion of Board	Failure to insure or cover by other means satisfactory to the Board may result in the Board's order to be returned to Canada

N.C. All individual and group self-insurers must be members of North Carolina Self-Insurance Guaranty Association as a condition of authority to self-insure.
S.C. Uninsured Employer Fund.
Texas: If employer is exempted from state and federal self-insurance requirements, beginning 1-1-91 self-insurance will be permitted upon Commission approval of self-insure.

Utah: Group self-insurance permitted for certain entities and insureds.
Vt. Nonresident employers may also be insured with private entities or self-insure.
W.C. Employer's liability for compensation if hurt was caused by employer's gross negligence or lack of an accident prevention program maximum \$21,000.
Y.B. Subject to approval of U.C. Gov. in Council Board may require employer to insure or reinsure.